

SERVICE DATE – JANUARY 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34130

RAILAMERICA, INC.–CONTROL EXEMPTION–KIAMICHI HOLDINGS, INC. AND
KIAMICHI RAILROAD L.L.C.¹

Decided: January 23, 2002

By petition filed December 7, 2001, RailAmerica, Inc. (RailAmerica or petitioner) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, to acquire control of Kiamichi Holdings, Inc. (Holdings) and its subsidiary Class III rail carrier Kiamichi Railroad L.L.C. (Kiamichi). We will grant the exemption.

BACKGROUND

RailAmerica is a noncarrier holding company that controls two Class II and 23 Class III rail common carriers. Petitioner has agreed to acquire the railroad subsidiaries of Kauri, Inc., pursuant to two notices of exemption and the instant petition for exemption.² RailAmerica indicates that, with regard to this transaction, the Texas Northeastern Railroad, a division of Mid-Michigan Railroad, Inc. (TNER), a RailAmerica subsidiary, connects with Kiamichi at Paris, TX.

¹ On December 5, 2001, a protective order was issued in this proceeding. The title reflected the expected participation of West Texas and Lubbock Railroad Company, Inc. (West Texas). Because West Texas will not, in fact, be a party to the transaction, the above title has been revised to reflect that fact.

² On December 7, 2001, RailAmerica filed a notice of exemption to acquire control of the Alabama & Gulf Coast Railway L.L.C. See RailAmerica, Inc.–Control Exemption–New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C., STB Finance Docket No. 34128 (STB served Dec. 28, 2001). Also on December 7, RailAmerica filed a notice of exemption to acquire control of Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co. See RailAmerica, Inc.–Control Exemption–StatesRail Acquisition Corp. and StatesRail, Inc., STB Finance Docket No. 34129 (STB served Dec. 28, 2001). Regarding another short line railroad company, RailAmerica filed a notice of exemption on November 28, 2001, to acquire control of ParkSierra Corp. See RailAmerica, Inc.–Control Exemption–ParkSierra Acquisition Corp. and ParkSierra Corp., STB Finance Docket No. 34100 (STB served Dec. 20, 2001).

For this reason, the class exemption at 49 CFR 1180.2(d)(2) is not available. Petitioner adds, however, that Kiamichi and TNER have different geographic markets and do not compete with each other.

RailAmerica indicates that control of Kiamichi creates the incentive for petitioner to market a new service from and to the points served on the Kiamichi in Oklahoma and Arkansas to and from Dallas, TX, on RailAmerica subsidiary, the Dallas, Garland and Northeastern Railroad, Inc. (DGNO), using TNER as the overhead connecting railroad. RailAmerica adds that such a service will be a competitive alternative to that of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company. Petitioner further states that the potential new service that will be available under the RailAmerica umbrella should generate the business necessary for TNER to repair its lines and reinstitute service to Paris and points west. Moreover, according to petitioner, the common control of TNER and Kiamichi will create the necessary synergy to market new competitive service to customers of Kiamichi, TNER, and DGNO. Finally, petitioner asserts that, while ownership of Kiamichi will change after the transaction, its operations will not.³

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior Board approval. Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)] and ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]. By enabling RailAmerica to integrate Kiamichi into its existing family of carriers, an exemption will foster sound economic conditions in transportation, ensure effective coordination among carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

³ On January 7, 2002, RailAmerica filed a letter stating that, in order to avoid creating a violation of 49 U.S.C. 11323, it has placed all of the common stock of Holdings in what RailAmerica describes as an independent, irrevocable voting trust free from the control or influence of RailAmerica and its subsidiary StatesRail II Railroad Corp., pending the receipt of required Board approval.

Regulation of the transaction is not needed to protect shippers from an abuse of market power as there will be no adverse impact on rail operations or any lessening of rail competition as a result of the proposed transaction. Control of Kiamichi by RailAmerica will merely add one Class III rail carrier to the family of carriers already controlled by petitioner. Connecting carriers Kiamichi and TNER serve different geographic markets and are not competitors, and Kiamichi's operations will not change as a result of the transaction. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

To ensure that Kiamichi's shippers are informed of our action, will require RailAmerica to serve a copy of this decision on them within 5 days of the service date of the decision, and to certify to us that it has done so.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because RailAmerica controls more than one Class II rail carrier, the transaction will be made subject to the labor protective conditions described in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Petitioner requests expedited action on the petition for exemption. The request is reasonable. Accordingly, we will grant the request and permit the exemption to become effective on the date of service and publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323, et seq., RailAmerica's acquisition of control of Holdings and Kiamichi.
2. RailAmerica shall serve a copy of this decision on Kiamichi's shippers within 5 days of the service date of this decision and certify to the Board that it has done so.
3. Notice will be published in the Federal Register on January 30, 2002.

4. This exemption will be effective on date of service. Petitions for reconsideration must be filed by February 14, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary